IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2847 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSUKHLAL MULJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

MR SP DAVE APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/05/2001

ORAL JUDGEMENT

1. The present Criminal Misc. Application has been filed under Sections 427 and 482 of the Code of Criminal Procedure, 1973 (for short "Code") by the petitioner

original accused in Criminal Case No. 193/98 as well as 194/98 before the learned J.M.F.C. Vanthali in Junagadh District for the offences punishable under the provisions of Prevention Food Adulteration Act, 1954.

2. The present petitioner was convicted for offence punishable under that Act by the learned Magistrate in the aforesaid two criminal cases on 19.4.1991.

3. The petitioner had preferred Criminal Appeals before the Sessions Court at Junagadh unsuccessfully.

4. Thereafter, petitioner had preferred Criminal Revision Application before this Court. As said above, the petitioner was prosecuted in two cases and in both, he was convicted and both the convictions were confirmed in appeal and therefore, two different criminal revision applications were preferred by him.

5. Out of two criminal applications, one has been withdrawn by him and therefore, it was disposed of accordingly. In another criminal revision, being Criminal Revisions Application No. 142/2000, the petitioner was heard and by judgement and order dated 25th April, 2000, this Court (Coram : Y.B. Bhatt,J.) dismissed the said revision application but reduced the sentence from one year to three months.

6. Now, petitioner has come with a case in this Misc. Application that two offences said to have been committed by the petitioners were in a single transaction; since the original complainant has purchased two samples of food on the same day and both the cases were conducted almost simultaneously, appeals were also heard simultaneously and therefore, in view of the above position, this Court should pass an order to run the aforesaid two sentences concurrently.

7. Rule was issued and Mr. S.P. Dave, learned APP waives service of Rule. I have heard learned advocates for the parties and have perused the papers.

8. Learned advocate appearing for petitioner has argued the matter at length and stated that there was no consideration of Section 427 of the Code for directing the sentences to run concurrently. That in the present case, no such order has been passed and therefore, this Court should direct that the sentences imposed in two matters shall run concurrently.

9. On the other hand, learned APP has strongly

opposed this application.

10. Now, it is very much clear that as per Section 427 of the code, when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

11. On the strength of the aforesaid provision contained in Section 427 of the Code, it has been strenuously argued by learned advocate for applicant that this Court should direct that said two sentences be run concurrently.

12. Now, it is very clear that unless there is a specific order passed by the Court for running two sentences concurrently, the sentences have to be run consecutively and for running the sentences consecutively, no order is required to be passed. There is no dispute about this legal proposition.

13. In the present case, it is found that learned Magistrate has conducted two cases and he has not mentioned that sentences in two cases shall run concurrently.

14. Even when the appeals were heard, learned Sessions Judge has not directed that the sentences imposed in two cases shall run concurrently.

15. Even, when this Court, disposed of Criminal Revision Application referred to hereinabove, it was not mentioned that the sentences imposed shall run concurrently.

16. It has been argued on behalf of petitioner at this stage that probably there was no request made on behalf of petitioner for such a prayer either to the learned Magistrate or to the learned Sessions Judge or even to this Court, when the matters were heard by respective courts. Any way when the requests have not been made before three court, I am of the view that this court now should not entertain the Criminal Misc. Application for directing the sentences to run concurrently.

17. It has been submitted that under Section 482 of

the Code, this Court can do substantial justice. There is no difficulty in accepting that proposition of law but for the purpose of doing substantial justice, this Court would not review its own order and therefore also, it is not legal, just and proper to pass an order that the sentences shall run concurrently in these two matters.

18. Learned advocate for petitioner has relied upon a decision of this Court in case of STATE OF GUJARAT VS. ZAVERBHAI KABABHAI, reported in 1996(1) GLR 423. Same observation has been made in this judgement showing the circumstances under which the Court may pass orders for running the sentences concurrently.

19. In the said decision of this Court, there is a reference to an observation of the Hon'ble Apex Court. It can be reproduced for ready reference as follows :-

> "10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."

On the strength of above observation, it has been argued that the basic rule of thumb over the years has been that the so called single transaction rule for concurrent sentences.

20. At the same time, it is a fact that it cannot be said that three courts has dealt with the matter at relevant point of time did not have a look into the provisions contained in Section 427 of the Code. Therefore, it can be impliedly said that three courts have concurrently found that sentences should be run concurrently, though, there was no mention in order about the same, since no such order is necessary, when sentences are to be run consecutively.

21. Another decision referred to by learned advocate for applicant is in the case of RANCHHOD LAL VS. STATE OF MADHYA PRADESH, reported in AIR 1965 SC 1248. Para 12 of the said decision is as under :-

" It was not urged before the High Court that the sentences in all the four cases be made to run concurrently. If it had been urged, the decision might have gone against the appellant if one considers the remarks of the High Court on the nature of the sentence in each case."

It cannot be said that this observation is in favour of present applicant.

22. Another observation, which can be read from para 17 is that the apart from the fact that the separate trial of the appellant in four cases for committing breach of trust with respect to several items was not illegal, there is nothing on record to show that the investigating agency had worked out all the case of criminal breach of trust prior to prosecuting the appellant for the offences for which he was tried at Sessions Trial No. 35 of 1961. That if all the offences had not been worked out prior to that, there could not have been a joint trial for all of them even if that could have been thought to be a more reasonable way of proceeding against the appellant.

23. At this stage, it has been contended that two offences said to have been committed by petitioner were in one transaction and therefore, both the cases could be tried together and therefore, there could be a joint charge and joint trial in respect of two cases.

24. Even in that case, when two different samples were purchased and when both of them were found to be adulterated, there were two offences committed by the applicant and even if one trial would have been conducted for each of the two offences committed by the petitioner under the provisions of Prevention of Food Adulteration Act, there could be two different sentences for each of the two offences against him.

25. Another observation in para 18 in the aforesaid decision is that the fact that the first two Sessions Trials ended in a conviction in January, 1962 on commitments made sometime in 1961 and that the Sessions Trials ending on July 20, 1963 were commitments was made sometime in 1962, it prima-facie indicates that the investigating agency submitted the chargesheets against the appellant for the offences tried in 1963 after-and possibly long after - it had submitted chargesheet with respect to the first two cases. There cannot, therefore,

be any design in prosecuting the appellant for different offences in four cases.

26. It is clear that said fact remains in the present case that he was tried in two different cases. Two different appeals were filed and two different revisions were filed.

27. Another citation has been referred by learned advocate for applicant is of U.J.S. CHOPRA VS. STATE OF BOMBAY, reported in AIR 1955 SC 633. Head note (E) of the said decision has been reproduced for ready reference:-

" Criminal P.C. (1898), Ss 430 and 439(6) - S.439(6) is controlled by S. 430.

Per Das J. : Section 430 in terms, applies to 'judgement and orders' passed by an appellate Court. It has no application to "decisions or orders" made by the High Court in revisions. The scope of Chap. 32 having been enlarged by the addition of sub-s.(6) to S.439, the scope of the exception to S.430 must also stand enlarged so as to include within the exception whatever, after the amendment of S.439, may come within that chapter must stand free from the rule of finality embodied in S.430. More over S.430 by its own terms saves the revisional power of the High Court to enhance the sentence. Therefore, S.439(6) is not in terms, controlled by S.430."

On the proposition of above discussion, an attempt was made to show that this finality as directed in the Code, does not apply to a revision, disposed of by this court. On going through the facts of the said case, it transpires that the facts in the aforesaid case were quite different. The appellant was convicted for the offences punishable under Bombay Prohibition Act by the Presidency Magistrate, the appeal filed by the appellant was dismissed. The State had preferred enhancement appeal and the enhancement was not permitted by the Hon'ble High Court. Even the High Court had permitted the appellant to prefer appropriate proceedings before Supreme Court under the provisions made under Article 134(1)(c) of the Constitution of India. The Hon'ble Supreme Court heard the matter and ultimately allowed the same.

28. Looking to the facts emerging from that case, it can be said that the facts of that case were quite

different from the facts of the present case.

29. Then learned APP has referred to a decision of Hon'ble Supreme Court in case of STATE OF ORISSA VS. RAM CHANDER AGARWALA ETC., reported in AIR 1979 SC 87, there the Hon'ble Supreme Court has observed as under :-

> "once the judgement has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgement as there is no provision in the Code which would enable the High Court to review the same or to exercise revisional jurisdiction."

No review can be entertained against the judgement in a criminal matter as there is no provision in the code, while so observing the Hon'ble Supreme Court has considered the provisions of Section 369, 424, 430 and 561 of Code of Criminal Procedure, 1898.

30. It is quite clear that appeal of the appellant petitioner has been dismissed and even the revision application has been dismissed but the sentence has been reduced and in that view of the matter, the matter has been finally disposed of and therefore, it is not upon to this Court to review the earlier order of this Court by passing order in this Misc. Criminal Application.

31. On the ground of sympathy also argument was advanced by saying that petitioner is an aged person and he was sent to jail in June, 2000 and if the sentence is ordered to be run concurrently, then he can be released by the end of April or May, 2001. It is also submitted that petitioner has children of marriageable age and looking to the facts and circumstances of the case, it would be in the fitness of things to reduce the sentence. Now, reduction of sentence in this Misc. Criminal Application is impermissible. More over this Court while exercising revisional jurisdiction has considered relevant aspects of the case and considering that food samples were not injurious to heath, the sentence was reduced. Therefore, when in exercise of the revisional powers, this Court (Coram : Y.B. Bhatt, J.) has shown leniency to the petitioner, it is not open to this court to extend further leniency in this Misc. Criminal Application. It is not legally permissible too since it would amount to review of earlier judgement in Revision Application.

32. In aforesaid view of the matter, I am of the

opinion that there is no merit in present Misc. Criminal Application and consequently, it is required to be dismissed.

33. In the aforesaid facts and circumstances of the case, this Misc. Criminal Application is ordered to be dismissed. Rule discharged.

(D.P. Buch, J.)

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